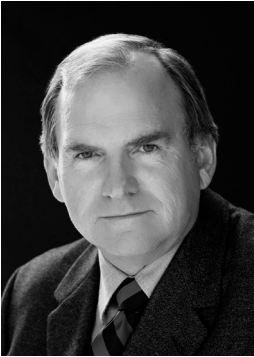


The seal of the State of New Mexico is centered in the background. It features a central figure of an eagle with its wings spread, perched on a cactus. The eagle is surrounded by a circular border containing the text "THE GREAT SEAL OF THE STATE OF NEW MEXICO" and the year "1912". Below the eagle is a banner with the Latin motto "CRESCIT EUNDO".

OPEN MEETINGS ACT

Compliance Checklist

New Mexico Attorney General Gary K. King



**“Information is the
currency of democracy.”**
~Thomas Jefferson

To the citizens and public officials of New Mexico:

Government that is open and accessible to all citizens is vital to a free society and the democratic process. In our State, the Open Meetings Act is a law that requires public officials to conduct public business in public. It seems like a simple enough mandate, but sometimes laws can be confusing to public officials and to the people they serve.

The Open Meetings Act Compliance Checklist is designed to help New Mexico government operate the way it should, under full “sunshine” for the benefit of all. This checklist is offered by my office to anyone who is interested in participating in the practice of democracy by using the information herein to help ensure that we maintain what President Abraham Lincoln called, “government of the people, by the people, for the people.”

Thank you for your interest in open government.

A handwritten signature in cursive script that reads "Gary K." followed by a stylized flourish.

Gary K. King
New Mexico Attorney General

OPEN MEETINGS ACT

A meeting conducted by a public body must be open to the public, unless the subject of the meeting falls within the limited exceptions specified by the Act. Public officials have a duty to allow all members of the public to attend the public body's meetings.

If a meeting is held or conducted in violation of the Open Meetings Act, any action taken by the public body during the meeting is void.

Compliance with the Open Meetings Act is mandatory. Public officials may not override the Act through adoption of local policies or procedures. Failure to comply with the Act may result in criminal prosecution.

Public officials should accommodate the public in open meetings. This means holding meetings in spaces that can accommodate all people wishing to attend and listen.

The following checklist is intended to help public bodies comply with the Open Meetings Act. For a more detailed discussion, please refer to the Open Meetings Act Compliance Guide available from the Office of the New Mexico Attorney General.

DOES THE OPEN MEETINGS ACT APPLY?

Open Meetings (§ 10-15-1 (B))

The Open Meetings Act applies to meetings of public bodies :

- _____ At which a quorum of the members of the public body is present in person or by telephone; and
- _____ During which the public body will formulate public policy, discuss public business or take action.

If the Open Meetings Act applies, the following checklist will help you comply with its requirements.

Notice Requirements

Non-emergency meetings:

- _____ Reasonable advance notice of the meeting has been provided to the public (§ 10-15-1 (D)).
- _____ The notice complies with the deadlines and procedures for meeting notices adopted by the public body under Section 10-15-1(D) of the Open Meetings Act.
- _____ The notice includes the date, time and location of the meeting.
- _____ The notice is published or posted in a place and manner accessible to the public.

_____ Notice has been provided to all FCC licensed broadcast stations and newspapers of general circulation that have provided a written request for notice of meetings (§ 10-15-1 (D)).

_____ The notice includes an agenda or information on how the public may obtain a copy of the agenda (§ 10-15-1 (F)).

Emergency Meetings (§ 10-15-1 (F))

Under limited circumstances, an emergency meeting may be held with little advance notice if:

_____ The public body did not expect the circumstances giving rise to the meeting; and

_____ If the public body does not act immediately, injury or damage to persons or property or substantial financial loss to the public body is likely.

Meeting Agenda (§ 10-15-1 (F))

The meeting agenda should:

_____ Include a list of specific items the public body intends to discuss or transact at the meeting.

_____ Clearly describe agenda items that the public body intends to discuss or act on during the meeting in order to give adequate public notice.

_____ Except for an emergency meeting, the agenda is available to the public at least 24 hours before the meeting.

_____ Except for emergency matters, the public body takes action only on those items specifically listed on the agenda 24 hours before the meeting.

Telephonic Participation (§ 10-15-1 (C))

If a member of the public body participates in a meeting by telephone :

_____ There must be a law or a rule of the public body authorizing its members to participate by conference telephone or similar communications equipment; and

_____ It must be “difficult or impossible” for that member to attend the meeting in person; and

_____ Each member participating telephonically can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

Closed Meetings – Permissible Subjects (§ 10-15-1 (H))

If a public body wishes to hold a closed meeting, it may do so only to engage in one or more of the following:

_____ Deliberations about the issuance, suspension, renewal or revocation of a license. Section 10-15-1(H)(1).

_____ Discussion of the hiring, promotion, demotion, dismissal, assignment or resignation of a public employee, or the investigation or consideration of complaints or charges against a public employee.

Section 10-15-1(H)(2).

- _____ Deliberations in connection with an administrative adjudicatory proceeding held by the public body. Section 10-15-1(H)(3).

- _____ Discussion of personally identifiable information about an individual student. Section 10-15-1(H)(4).

- _____ Discussion of collective bargaining strategy prior to negotiations between a public body and a union representing employees of the public body; collective bargaining sessions involving the public body and union, Section 10-15-1(H)(5); and consultations and impasse resolution procedures at which the public body and the union are present. Section 10-7E-17(G) of the Public Employee Bargaining Act.

- _____ Discussion of a sole source purchase that exceeds \$2,500 or of the contents of competitive sealed proposals during the contract negotiation process. Section 10-15-1(H)(6).

- _____ Meeting with the public body's attorney pertaining to threatened or pending litigation in which the public body is or may become a participant. Section 10-15-1(H)(7).

- _____ Discussion of the purchase, acquisition or disposal of real property or water rights. Section 10-15-1(H)(8).

- _____ For committees or boards of public hospitals only, discussion of strategic or long-range business plans or trade secrets. Section 10-15-1(H)(9).

- _____ For the Gaming Control Board only, a meeting that

deals with information made confidential by the Gaming Control Act. Section 10-15-1(H)(10).

Closed Sessions – Procedures (§ 10-15-1 (I))

To properly close a portion of an open meeting, the following actions must be taken (§ 10-15-1 (I) (1)):

- _____ A motion stating the specific provision of law authorizing the closed meeting and a reasonably specific description of the subject to be discussed.
- _____ A roll call vote on the motion to close the meeting in the open session. The vote of each member is recorded in the minutes
- _____ Only the matters stated in the motion to close are discussed in the closed session.
- _____ Generally, action on an item discussed in a closed session must be taken in an open meeting (§ 10-15-1 (H))
- _____ After a closed meeting is completed, a statement affirming that the matters discussed in the closed meeting were limited to those stated in the motion to close is recorded in the minutes (§ 10-15-1 (J)).

For closed meetings of a public body held separate from an open meeting, the above criteria apply except:

- _____ Instead of a motion to close, appropriate public notice is provided that includes the specific provision of law authorizing the closed meeting and a reasonably specific description of the subject to be discussed (§ 10-15-1 (I)(2)).

_____ Following completion of the closed meeting, a statement is entered into the minutes of the next open meeting specifying that the matters discussed in the closed meeting were limited to those stated in the notice of the closed meeting (§ 10-15-1 (J)).

Meeting Minutes (§ 10-15-1 (G))

If the meeting is open, written minutes are required. Minutes must contain at least:

_____ The date, time and place of the meeting; and

_____ The names of all members of the public body attending the meeting and of those members who are absent; and

_____ A description of the substance of all proposals considered during the meeting; and

_____ A record of any decisions made and votes taken that shows how each member voted (voting by secret ballot is not permitted).

The following also apply to meeting minutes:

_____ A draft copy of the minutes is prepared within 10 working days of the public meeting.

_____ The minutes are approved, amended or disapproved at the next meeting where a quorum of the public body is present.

_____ All minutes are made available for public inspection.